

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Figueroa Analyst: LuAnna Hass Bill Number: SB 1955

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: August 8, 2002

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Enforce Provisions Regulating Tax Preparers

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 3, 2002, STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY

This bill would allow the Franchise Tax Board (FTB) to notify the California Tax Education Council (CTEC) when it encounters Tax Preparers who are not properly registered.

SUMMARY OF AMENDMENTS

The August 8, 2002, amendments resolved some, but not all, of the implementation and policy concerns as discussed in the department's analysis of the bill as amended July 3, 2002. Specifically, the amendments remove language that:

- Required FTB to enforce the laws regulating Tax Preparers.
- Authorized FTB to:
 - cite individuals preparing tax returns in violation of the rules governing tax preparers,
 - levy a fine on these individuals not to exceed \$1,000, and
 - issue a cease and desist order, effective until the Tax Preparer is in compliance.
- Allowed FTB to accept funds from CTEC for purposes of enforcing this bill.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

8/13/02

The amendments add language that would:

- Allow FTB to enforce the law regarding Tax Preparers who fail to register.
- Require FTB to notify the CTEC when it encounters Tax Preparers who are not properly registered.
- Require CTEC to notify the Attorney General, a district attorney, a city attorney, or the Department of Consumer Affairs of the Tax Preparers who are not properly registered. One of these entities may:
 - cite individuals preparing tax returns in violation of the rules governing tax preparers,
 - levy a fine on these individuals not to exceed \$1,000, and
 - issue a cease and desist order, effective until the Tax Preparer is in compliance.
- Require CTEC and FTB to formulate a memorandum of understanding (MOU) outlining the reimbursement policy for expenses incurred by FTB associated with this provision.

As a result of these amendments, a technical and two additional implementation considerations have been identified. For convenience, the new and remaining concerns are provided below. Except for an updated fiscal and economic impact, the remainder of the department's analysis of the bill as amended July 3, 2002, still applies.

POSITION

Pending.

Summary of Suggested Amendments

Amendments are suggested to provide language to address the technical and two of the implementation concerns. These amendments have been discussed with the author's staff.

IMPLEMENTATION CONSIDERATIONS

FTB administers the income tax laws; its expertise is not in the enforcement of the business and professions requirements applicable to Tax Preparers. If FTB were authorized to enforce the provision that creates a violation for Tax Preparers who fail to register and be required to notify CTEC of violations, the department could incur additional travel expenses, training, staff hours, and other resources that would be necessary to properly implement the provisions of this bill.

Further, FTB and CTEC would be required to develop an MOU regarding reimbursement policies. As stated below under "Additional Comments," an MOU already exists between the two agencies, but the MOU does not address reimbursement. Generally, the department addresses reimbursement of expenses with other agencies through the negotiation and approval of a contract. To ensure the department receives proper reimbursement, Amendment 2 is provided to replace the reference to an MOU with a reference to a contract agreed upon by both parties. Without this amendment requiring a contract, and due to limited budget and resources, an additional appropriation may be necessary to implement this bill to ensure reimbursement of expenses. Either the contract or an appropriation would ensure the department would not be required to redirect resources from administering the income tax laws.

This bill would allow the Attorney General, a district attorney, a city attorney, or the Department of Consumer Affairs to levy a fine "per violation." The author may wish to define this term to clarify what constitutes a violation (e.g., per return, per preparer, etc).

TECHNICAL CONSIDERATIONS

This bill states FTB “may” enforce the law regarding Tax Preparers that fail to register and states FTB “shall” notify CTEC of preparers that fail to register. This interchanging of “may” and “shall” is ambiguous and could lead to confusion of whether FTB is required to affirmatively enforce the provisions of this bill. For consistency purposes, Amendment 1 is provided to condense the enforcement and notification language and replace “shall” with “may.”

FISCAL IMPACT

Costs cannot be determined until either the MOU required in this bill or the contract suggested above under “Implementation Considerations” is negotiated and approved. It is anticipated that the costs would be minor (approximately \$25,000-\$30,000 for travel). Costs for staff resources will be determined as the details for the contract are negotiated.

ECONOMIC IMPACT

This bill would not impact the state’s income tax revenue.

ARGUMENTS/POLICY CONCERNS

The primary purpose of the Internal Revenue Service (IRS) and FTB is to administer the tax laws. Both federal and state law provide for separation between tax administration and the regulation of all tax professionals. At the federal level, the Office of the Director of Practice in the Office of the Secretary of the Treasury oversees the practice of representatives before the IRS and is responsible for enforcing the laws that regulate these individuals. Similarly, the Department of Consumer Affairs is the established entity that regulates the practices of the various professionals at the state level. CTEC has the authority to establish guidelines for Tax Preparers, whereas FTB’s relationship with Tax Preparers is defined by its role to ensure that preparers determine the correct amount of tax for their taxpayer clients. Therefore, this bill would be a substantial policy change by statutorily permitting an agency responsible for tax administration, FTB, to enforce laws pertaining to the regulation of Tax Preparers. It is unclear what impact this bill would have on the positive relationship that currently exists between Tax Preparers and the department.

Additional Comments

The department’s fraud staff has an existing MOU with CTEC. Among other things the MOU provides that fraud staff when visiting Tax Preparers would provide CTEC information to Tax Preparers. However, due to recent budget and resource constraints, visits to Tax Preparers by the department’s fraud staff has been significantly reduced.

As stated above under Policy Considerations, this bill would expand FTB’s authority beyond its current authority to administer taxes. Therefore, this bill should have been referred for consideration before a Revenue and Taxation Policy Committee.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1955
As Amended August 8, 2002

AMENDMENT 1

On page 32, strikeout lines 13 through 17, inclusive, and insert:

22253.2. (a) The Franchise Tax Board may notify the California Tax Education Council when it identifies an individual in violation of paragraph (1) of subdivision (a) of Section 22253.

AMENDMENT 2

On page 32, strikeout lines 29 through 31, inclusive, and insert:

(c) The California Tax Education Council shall enter into an agreement with the Franchise Tax Board to provide for reimbursement to the Franchise Tax Board of expenses incurred to implement the this section.